

REMARKS/ARGUMENTS

Claims 1-8, 10-31, 67-69

The allowance of claims 1-8, 10-31, and 67-69 is noted and appreciated.

Claims 32-65

In claims 32-65, claim 32 is an independent method claim and claim 58 is an independent apparatus claim. Claims 33-51 and 54-57 are method claims dependent on claim 32. Claims 59-65 are apparatus claims dependent on claim 58.

Dependent method claims 33, 35-45, and 47-50 are indicated as allowable. Dependent apparatus claims 59 and 61-63 are also indicated as allowable.

Independent claims 32 and 48, and dependent claims 34, 46, 51-56, 60, 64, and 65 have been rejected as anticipated by newly cited U.S. Patent 6,371,921 to Caro et al. (herein Caro). Dependent claim 57 was rejected under 35 U.S.C. §103 on the Caro reference and U.S. Patent 5,485,848 to Jackson et al.

By the present amendment, independent method claim 32 and independent apparatus claim 58 have been amended to recite clearly patentable subject matter and to distinguish same over the references applied in the Office Action of May 18, 2005.

Specifically, independent method claim 32 and independent apparatus claim 58 have been amended to recite the use of a "naturally occurring characteristic produced by the physiological functioning of a subject". See step (a) of method claim 32 and element (a) of apparatus claim 58. The naturally occurring characteristic is further defined as one for which changes of the characteristic are capable of indicating that a change in a measured circulatory system condition of a subject may also have occurred. Suitable naturally occurring characteristic are set out in claims 33 and 59 to include such phenomena as the exhaled CO₂ amount, the end tidal CO₂ level, and the subject's heart rate.

The gist of the present invention is to monitor such a naturally occurring physiological characteristics as changes in the characteristic are an indicator that changes of a circulatory system condition of the subject may possibly also have occurred. A change in the

characteristic warrants a re-measurement of the circulatory system condition to determine whether a circulatory system condition change has, in fact, taken place.

The approach recited in amended independent claims 32 and 58, stands in distinct contrast to any teaching or suggestion of the Caro reference. In the Caro reference, an exciter, such as that shown as 203 in Fig. 2, is applied to a patient and the artificially created response, or induced perturbation, of the patient's body to the excitation used to determine the patient's blood pressure or other hemoparameter.

It is readily appreciated that, in contrast to Caro, no external excitation is required for a subject to exhale CO₂ or to have a heart rate and to thus exhibit the naturally occurring characteristic employed in the present invention.

The amended claims reciting the use of naturally occurring characteristics, therefore clearly distinguish over any teaching or suggestion of the Caro reference that employs an artificially created response. Withdrawal of the rejection of these claims is respectfully requested. The same is true with respect to claims 34, 46, 51, 54-56, 60, 64, and 65 dependent on claims 32 and 58. With respect to claim 57, the Jackson et al. reference does not overcome the shortcomings of the main Caro reference.

Minor, language conforming changes have been made to claims 34 and 60.

The following comprise applicant's comments on the Examiner's of reasons for the indication of allowable subject matter. The Examiner statement is seen as a succinct summary of the subject matter of allowed claim 1. However, it is to be understood, that the language of claim 1, as well as the other allowed claims, speaks for itself and a literal and equivalent scope of the claims is to be determined by reference to that language. For clarification, it is to be noted that claim 59 is an apparatus claim depending from claim 58. The paragraph dealing with claim 47 is also understood to include claim 48. Claims 61-63 recite further details of the apparatus of claim 58.

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Reply to Office Action of May 18, 2005

Passage of this application to allowance with the herein amended claims, as well as those already allowed, is respectfully requested.

Respectfully submitted,

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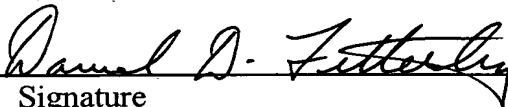


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